HARDIAL SINGH HARI SINGH

v.

DAIM ZAINUDDIN & ORS.

HIGH COURT MALAYA, SHAH ALAM
MAHADEV SHANKAR J
[SELANGOR CRIMINAL APPEAL NO. 41-118-89, 44-26-89]
12 OCTOBER 1990

COPYRIGHT: *Compilation of data - Common statutory source - No originality - Seizable offences - Sections 7, 15(1)(i) of Copyright Act 1969.*

CONSTITUTIONAL LAW: *Courts - Vexatious - Civil and criminal suits - Appeals - Legal proceedings - Power of the Court to restrain further institution of legal proceedings - Article 17 of Schedule to Courts of Judicature Act 1964.*

On 22 April 1989 the complainant H gave 2 volumes to the Magistrate's Court at Rawang; volume 1 was called complaint on oath (the said complaint) and volume 2 was headed notice of petition (the said petition). The latter was alleged to have been filed as a civil suit in the Supreme Court. H was invoking s. 133 of the Criminal Procedure Code (the Code) against 60 respondents.

H's complaint was dismissed by the Magistrate who provided his grounds in writing on 8 June 1989. Earlier to this, on 29 April 1989, H filed a notice of appeal in the High Court. On 8 July 1989, H filed a petition of appeal in the Rawang Magistrate's Court. On 3 November 1989, H also filed a criminal application in the High Court in Shah Alam which was based on the complaint of 22 April 1989 which had annexed to it the documents filed by H on 8 July 1989 (volume 1 and volume 2). This criminal application was against the Attorney-General and MDC Sdn. Bhd., a legal publisher.

In 1985 H had also sued MDC and its principal officer (PO) for copyright based on similar allegations. This action was dismissed; however H gave notice of appeal to the Supreme Court. H did not file this appeal record on time and an application for extension of time was refused; the appeal was dismissed.

Notwithstanding, H prepared another notice of petition invoking the original jurisdiction of the Supreme Court, once again naming MDC and its PO as respondents.

The basis of H's complaint was that all the respondents in all the actions had infringed or engaged in a conspiracy to infringe his copyright. H was claiming copyright over documents which he prepared which incorporated the customs duties order (the order) and various other duties. The order was updated by the government in 1988, whereby MDC published a Malaysian Practical Guide to the order.

The issue was whether H, in the compilation of this data, had expended a sufficient degree of labour and skill in compiling and arranging his material for it to be protected as an original work.

Held:

[1] (a) Under s. 7 of the Copyright Act 1969 (the Act) the copyright in the source material (the statutory instruments containing the data) belonged to the government.

(b) The framework and alphabetical sequence of every compilation by H followed the government publication and the information contained therein was also obtained from statutory sources.

[2] (a) H failed to show that these compilations were original as he could not demonstrate that he had imposed some sort of unique pattern or order on the material he had copied which was not to be found in the government publications.

(b) Mere listing of facts is not enough to make something a literary work, however laborious the undertaking.

(c) So far as MDC Sdn. Bhd. was concerned it was equally open to them to make their own compilations from common statutory sources.

[3] H's claim of his right to prosecute MDC by virtue of s. 380(2)(a) of the Code fails as that section refers to summary non-seizable offences; the offences in question here are seizable offences and by virtue of s. 377 of the Code and s. 15(1)(i) of the Act, only the Public Prosecutor can prosecute such cases. The rest of H's complaints were civil disputes.

[4] On the history and facts of this case which reflect vexatious litigation and abuse of process by H, the Court exercised its power under Article 17 of the Schedule to the Courts of Judicature Act 1964 and ordered that H by restrained from instituting any further legal proceeding except under judicial supervision.

[Order accordingly.]

Case referred to:
Hiralal [1950] AIR Assam 292

Legislation referred to:
Copyright Act 1969, ss. 7, 15(1)(i)
Criminal Procedure Code, ss. 2, 133, 377, 380(ii)(c)

Hardial Singh s/o Hari Singh - in person
For the 1st respondent - Mohd. Yusof bin Johar Ali
For the 2nd respondent - Norizah Bukhari

JUDGMENT

Mahadev Shankar J:

On 22 April 1989 Hardial Singh Sekhon (Hardial Singh) came before the Magistrate at Rawang and handed him two volumes. The first volume was headed "complaint on oath". Hardial Sing named himself as the complainant, and 60 others as respondents, starting with the Minister of Finance and ending with the Attorney-General (both in their personal names) followed by the Central Bank of Malaysia. This purported complaint (the said complaint) ran into 61 closely typed paragraphs which took up 55 pages; attached thereto were 68 Exhibits. Volume 2 (the said petition) marked Annexure BQ was headed notice of petition. It was purported to have been filed in the Supreme Court in the matter of Civil Suit C6158 of 1985 (the said civil suit). This said petition ran into 56 pages and is dated 15 September 1988. It is accompanied by an affidavit verifying the petition to which is attached another 57 Exhibits. Both volumes ran into several hundred pages.

Encik Hardial Singh claimed that he was invoking the process provided by s. 133 of the Criminal Procedure Code (the Code), so that criminal prosecutions could be brought against the respondents.

The Magistrate declined to take cognisance and dismissed the complaint. Hardial Singh filed a notice of appeal on 29 April 1989. The Magistrate gave his grounds in writing on 8 June 1989 in this appeal which was registered as Rayuan 89-17/89 in Rawang. After being notified thereof the High Court Registrar informed Mr. Hardial Singh on 4 July 1989 that the Appeal had been registered in the High Court under No. 41-118-89.

On 8 July 1989 Hardial Singh filed a "petition of appeal" in the Rawang Magistrates Court against the decision of the Magistrate refusing to take cognisance of his complaint.

Before this appeal was formally disposed of, Hardial Singh did something else.

On 3 November 1989 Hardial Singh filed a criminal application in the High Court Registry in Shah Alam. This criminal application was numbered 44-26-89. The document refers to the complaint made on 22 April 1989. It attaches by way of Exhibits HS1 (the petition of appeal filed on 8 July 1989 and the first volume presented to the Magistrate on 22 April 1989 (which contained the complaint) and Exhibit HS2 (the notice of petition to the Supreme Court and exhibits i.e. the second volume aforesaid).

This purported criminal application named only two respondents *viz*. the Attorney General by his personal name and MDC Sdn. Bhd. and prayed for an order for "suspension and interdict" (sic) against the two respondents. It came up for hearing in open Court on 1 February 1990. Hardial Singh appeared in person and made a lengthy oral submission in support of not only of this application but also of his appeal. I reserved judgment for reasons which now follow.

To call the first volume a complaint and the second volume a petition would be a misnomer. Each is in fact a harangue rooted in Hardial Singh's obsession that everybody he has named as a respondent has infringed or engaged in a conspiracy to infringe his copyright. The sheer verbosity of his language not only defies description but is not easily understood.

But as far as I can make out Hardial Singh conducted an advisory service on customs duties, tariffs, surtaxes and the like. In 1953 the Malaysian Government published its Customs Duties Order which also served as an alphabetical index of customs tariffs. According to Hardial Singh the order aforesaid only set out in Table A import duties payable. In Table B export duties were given. Hardial Singh says he copied both the import and export duties from the official tables into a single document. For this he claims copyright. This is but one example. He did the same sort of thing for surtaxes, sales, taxes and a variety of other duties.

The respondents named and numbered 4 to 58 in the said complaint were forwarding agents, manufacturers or other such entities who represented Hardial Singh's clientele in the sense that he sold them the information he had compiled in terms that they should return his compilations to him. These entities did not return the compilations. This failure occurred mostly around 1983 to 1985.

The Government updated its duties, tariffs etc. in the Customs Duties Order 1988. Thereafter MDC. Sdn. Bhd. published a Malaysian Practical Guide to the Customs Duties Order 1988. The Guide collectively sets out import duty, surtax, sales tax and export duty against each item in the Tariff Code. Hardial Singh claims that MDC Sdn. Bhd. thereby infringed his copyright.

Mr. Hardial Singh has persuaded himself that the case of *Alexander (W) v. Mackenzie (R)* [1946] 9 Sc. Sess. Cass (2nd ser) 748 confers legitimacy upon the claims he is making. However in that case the author had collected a number of precedents which he had constructed by

following the directions of a statute. These precedents or "styles" as they were termed were held entitled to copyright protection, because the precedents in question were constructed by the author.

We are dealing here not with a precedent or a collection of precedents but a compilation of data. In such cases the question is whether Hardial Singh has expended a sufficient degree of labour and skill in compiling and arranging his material for it to be protected as an original work.

In the matter before me the copyright in the source material (i.e. the statutory instruments containing the data) belonged to the Government (see s. 7 of the Copyright Act 1969.) The framework and alphabetical sequence of every compilation by Hardial Singh followed the Government publication and the information contained therein was also obtained from the statutory sources.

Thus the element of original composition if any by Mr. Hardial Singh was not readily observable, because the way he arranged his factual material followed the Government format. His failure to show that his compilations were original lay in his incapacity to demonstrate that he had imposed some sort of unique pattern or order on the material he had copied which was not to be found in the Government publications. Mere listing of facts is not enough to make something a literary work, however laborious the undertaking. So far as MDC Sdn. Bhd. was concerned it was equally open to them to make their own compilations from common statutory sources. A close resemblance in such a case to Hardial Singh's tabulations was not enough. What was required was clear proof that they had copied his original work and that was evidently missing.

In Civil Suit C. 6158 of 1985 Hardial Singh sued MDC Sdn. Bhd. and its principal officer alleging breach of copyright. The matter came before a very experienced Commercial Judge Y.A. Dato' Zakaria Yatim. The substance of the allegations made are almost identical to what is being alleged here. He dismissed the action on 20 May 1986. In the course of his judgment he said:

> ... After reading the plaintiff's statement of claim I found that it not only disclosed no cause of action, it was also frivolous and vexatious. He made several averments in the statement of claim which were immaterial and irrelevant. In para. 41 of his statement of claim he used the term "passing-off" and made averment as if he was alleging a trade mark infringement. Furthermore in his statement of claim he made wild allegations and confusing statements. His claim was clearly an abuse of the process of the Court ...

Hardial Singh gave notice of appeal to the Supreme Court under Supreme Court Civil Appeal No. 237 of 1986 on 18 June 1986. It would appear from the papers filed that he did not file his appeal record in time. An application for extension of time was refused. The appeal was dismissed on 26 October 1987. As between him and MDC Sdn. Bhd. the matter was *res judicata*.

Hardial Singh next prepared the notice of petition for filing in the Supreme Court on 15 September 1988 allegedly invoking its original jurisdiction. MDC Sdn. Bhd. and its principal offices were again named as the respondents. The material contained in the petition is again the same.

This was an obvious attempt to circumvent the dismissal of his appeal but since there was no apparent provision of the law under which such a petition could be filed it did not get him anywhere.

The present application under s. 133 of the Code the consequent appeal SCA 41-118-89, and this criminal application is based on the self same material with very minor variations. I therefore propose to deal with them together.

By s. 2 of the Code a complaint means *inter alia* the allegation made in writing to a Magistrate with a view to his taking action under the Code that some person has committed an offence.

Hardial Singh's volumes contained everything he could possibly have said by way of complaint both as to matters of fact and also as to matters of statute and case law. It was couched in the form of an affidavit.

That the Magistrate is not a rubber stamp is clear from s. 135 of the Code. He may dismiss the complaint if in his judgment there is no sufficient ground for proceeding.

All the Magistrate had to consider was whether there was *prima facie* evidence of a criminal offence. A dispute of a civil nature though dressed up in criminal garments should be dismissed. (see *Hiralal* [1950] AIR Assam 292).

The High Court had already dismissed Hardial Singh's claim in the civil suit, thereby holding that the copyright Hardial Singh claimed did not exist.

Having failed against MDC Sdn. Bhd. in the civil suit, Hardial Singh claims to have the right to prosecute them by virtue of s. 380(2)(c) of the Code. But that section refers to summary non-seizable cases. The offences alleged by Mr. Hardial Singh are seizable offences. (see First Schedule to the Code - Offences Against Laws Other than the Penal Code). By s. 377 of the Code and s. 15(1)(i) of the Copyright Act 1969 only the Public Prosecutor can prosecute such cases. (see *Long bin Samat & Ors. v. PP* [1974] 2 MLJ 52.

Hardial Singh's complaints against the forwarding agents, manufacturers and other related entities, grounded on their failure to return his compilations to him, were civil disputes.

Para. 44 of his complaint is a diatribe against the Central Bank of Malaysia upon matters so extraneous to his application that it is an open question whether Hardial Singh was in his right mind when he brought this application. A number of other matters raised in his documents point to the same conclusion.

Taking everything into consideration I find that the appeal filed (i.e. SCA 41-118-89) is devoid of merit and I now dismiss it. I have come to the same conclusion with regard to the Criminal Application now before me and I dismiss it also.

The interests of justice and the good administration of our Courts makes it necessary for me to make another order because it is my finding on all the material before me that this is a proper case for the exercise of the power vested in this Court by Article 17 of the Schedule to the Courts of Judicature Act 1964 which reads:

> Power to restrain any person who has habitually and persistently and without reasonable cause instituted vexatious legal proceedings in any Court, whether against the same or different persons, from instituting any legal proceedings in any Court save by leave of a Judge. A copy of any such order shall be published in the Gazette.

MDC Sdn. Bhd. and its principal officer were made parties to a suit which was described as a vexatious legal proceeding by the Judge who tried it. The same material has been urged in the Supreme Court, and again in these so called criminal proceedings which are in reality an abuse of process. A substantial part of the problem in these matters is the fact that Encik Hardial Singh insists on acting for himself in the belief that he is better qualified legally to do so than any other.

The sad result of all this is a history of vexatious litigation. Bearing in mind the Commentary in the *Supreme Court Practice 1979* Vol. 2, para. 3390, I consider it desirable that he be restrained from instituting any further legal proceedings except under judicial supervision. I accordingly order that Hardial Singh Sekhon be restrained from instituting any legal proceedings in any Court save by leave of a Judge. A copy of this order shall be published in the Gazette.

Also found at [1991] 1 CLJ 116